

Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital and Hospital Workers Union, Local 250, Service Employees International Union, AFL-CIO, Petitioner.
Cases 20-RC-14489, 20-RC-14492, and 20-RC-14493

April 1, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTIONS

Pursuant to Stipulations for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 20 of the National Labor Relations Board on November 1, 1977, elections¹ by secret ballot were conducted in three separate units in the above-entitled proceeding on December 22, 1977, under the direction and supervision of the Regional Director.

On December 28, 1977, the Petitioner filed timely objections to the election. The Regional Director conducted an investigation of the challenged ballots and the issues raised by the objections. On March 23, 1978, the Petitioner withdrew seven of its objections. On March 28, 1978, the Regional Director issued and duly served on the parties her Report on Objections, Challenges, and Notice of Hearing, in which she directed that a hearing be held to resolve the challenged ballots and the issues raised by Petitioner's Objections 4, 7, 8, and 11. Pursuant thereto, a hearing was held before a duly designated Hearing Officer on April 11, 12, and 17, and June 29 and 30, 1978.

On November 21, 1978, Hearing Officer Evelyn M. Hunt issued her Report on Objections and Challenged Ballots in which she recommended that the challenges to 3 of the ballots in the technical and service and maintenance unit be sustained and that the remaining 10 challenges be overruled and those ballots be opened and counted. The Hearing Officer also recommended that Petitioner's Objections 4 and 8 be sustained and Objections 7 and 11 be overruled. The Hearing Officer directed that if a revised tally of ballots shows that the Petitioner did not receive a majority of the valid votes cast in the technical and service and maintenance unit, the election be set aside in that unit as well as in the other two units. Thereafter, the Petitioner filed exceptions to the Hearing Officer's report that Objections 7 and 11 be overruled, and the Employer

filed exceptions to the Hearing Officer's report that Objections 4 and 8 be sustained.

On June 20, 1979, the Supreme Court issued its decision in *N.L.R.B. v. Baptist Hospital, Inc.*, 442 U.S. 773, involving issues related to Objections 4 and 8 herein. On September 13, 1979, the Board remanded this proceeding to the Regional Director to arrange a further hearing in light of that decision. A hearing limited to that purpose was held before a duly designated hearing officer on November 27, 1979.

On April 30, 1980, Hearing Officer Evelyn M. Hunt issued her Supplemental Hearing Officer's Report on Objections and Challenged Ballots in which she recommended that Petitioner's Objection 8 be overruled and Objection 4 be sustained. Thereafter, the Employer filed exceptions to the Hearing Officer's supplemental report and the Petitioner filed an opposing brief.

Upon the entire record in this case, including the hearing, the Hearing Officer's report, and the exceptions and briefs thereto and the supplemental hearing, the Hearing Officer's supplemental report, and the exceptions and briefs thereto, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purpose of the Act to assert jurisdiction herein.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The parties stipulated, and we find, that the following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Case 20-RC-14489. All full-time and regular part-time registered nurses and medical laboratory technologists; excluding all other employees, coordinator of social services, director of nurses, assistant director of nurses, nurse coordinators, head nurses, charge nurses, emergency room supervisor, operating room supervisor, infection control nurse, laboratory director, assistant laboratory director, guards and supervisors as defined in the Act.

Case 20-RC-14492. All full-time and regular part-time technical, service and maintenance employees; excluding professional employees, registered nurses, medical laboratory technologists, business office clericals, confidential em-

¹ The tally of ballots shows the following: In the first unit, consisting of all registered nurses and laboratory technologists, 67 ballots. In the second unit, consisting of all technical and service and maintenance employees, 127 ballots were cast of which 53 were for, and 61 against, the Petitioner; there were 13 challenged ballots. In the third unit, consisting of all business office clerical employees, 26 ballots were cast of which 4 were for, and 20 against, the Petitioner; there were 2 challenged ballots. Only the challenged ballots in the technical and service and maintenance unit are sufficient to affect the results of the election in that unit.

ployees, guards and supervisors as defined in the Act.

Case 20-RC-14493. All full-time and regular part-time business office clerical employees; excluding all other employees, comptroller, director of finance, business office manager, chief accountant, collection and admitting supervisor, billing supervisor and out-patient admitting supervisor, guards and supervisors as defined in the Act.

5. The Board has reviewed the rulings made by the Hearing Officer at the hearing and the supplemental hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

6. Objection 7 concerns the Employer's restriction of access by the Petitioner's representatives to a breakroom. Objection 11 concerns access by the Petitioner's representatives to the hospital and the lack of access in conjunction with the Employer's no-solicitation policy. Objection 4 concerns whether the Employer's no-solicitation rule was discriminatorily enforced. Objection 8 concerns whether the Employer warned an employee for talking about the Petitioner. For the reasons below, we agree with the Hearing Officer's recommendations that Objections 7 and 11 relating to Petitioner's access be overruled and that Objection 8 be overruled. In addition, we agree with the Hearing Officer's recommendation, but for substantially different reasons, that Objection 4 be sustained.

A. Petitioner's Access

Intercommunity Hospital is a moderately small acute care hospital licensed for 80 beds and 10 to 12 newborn infants. In February 1977 the Employer moved into a new building which is about 150 yards from the street. A paved drive leads from the street to the hospital. There is a stop sign where the drive comes to the street.

In September 1977, the Petitioner began its organizing drive at Intercommunity Hospital. In furtherance of its drive, business representatives in late November and early December² handed out literature at the hospital's major entrances during shift changes. They were told to leave and instead to stand at the intersection of the driveway and the street. The Union found that location unsatisfactory because cars did not stop. Subsequently, business representatives returned to the hospital entrances and parking lots.

The hospital insisted that Petitioner's agents should be off the premises; the Petitioner maintained that its agents could go wherever the public was permitted. Because the hospital had no cafete-

ria or coffeeshop, the Petitioner thought the main breakroom was a good place for its representatives to contact employees. However, the hospital had posted an "Employees Only" sign. A union representative attempted to hand out literature in the breakroom and was asked to leave. He refused and the police were summoned. Another representative displayed literature at a desk in the main lobby. He was told he could not solicit there and the desk was removed. The representative moved to a couch but no employees approached him there.

On December 12, 1977, the Employer sought and secured a temporary restraining order. The court ordered the Union out of the hospital interior, away from the entrances and parking lots, and relocated to the intersection of the driveway and the street. The restraining order was converted to an injunction on December 19.

The Petitioner contends that its agents should have been permitted access to areas of the hospital open to the public especially because there was not a reasonable alternate means of communication with hospital employees. Among other things, the Petitioner cites the Employer's strict no-solicitation rules, bad weather, holiday season, errors in the list of employee names and addresses, and difficulty in finding employee homes in rural areas. As found by the Hearing Officer none of the difficulties encountered by the Petitioner constituted an undue hardship warranting special access. We agree with the Hearing Officer that the Petitioner had other reasonable means of communication to reach the employees with its message. The Petitioner did not have employees, as opposed to nonemployee agents, distribute literature at the hospital entrances or the parking areas, and the Petitioner did not conduct a media campaign. Instead, it relied on personal contact at meetings and home visits. The Petitioner did rent a motel room near the hospital at which employee meetings were held which were attended by employees, and the Petitioner did visit a number of employees at their homes. The employee homes although scattered in a rural setting were within reasonable reach. In addition, near the beginning of the Petitioner's active campaign, management had suggested to union officials that, if they agreed not to come inside the hospital, they could distribute literature at hospital entrances during shift changes. The Petitioner, insisting on its position that the hospital was open to the public, rejected the proposal.

The standards applicable to the distribution of union literature and solicitation of employee support by nonemployee organizers differ markedly from the standards applicable to employees. See *N.L.R.B. v. Babcock & Wilcox Co.*, 351 U.S. 105

² The election was held on December 22, 1977.

(1956). Where as here a union has other reasonable means of communication with employees, an employer may validly refuse to permit nonemployee organizers on its premises if it does so in a nondiscriminatory manner. In this case, the Employer had a rule prohibiting outsiders from distributing literature or soliciting at the hospital at any time. The only outsiders permitted to solicit were those engaged in activities to benefit the hospital or for charity, including United Fund charities, hospital guilds and philanthropies, Girl Scout projects for the hospital's benefit, drug salespersons, and in-service training representatives. Solicitation for such purposes is a recognized and permissible exemption from a valid no-solicitation rule and does not constitute disparate application of a rule banning outside solicitation. *Rochester General Hospital*, 234 NLRB 253, 259 (1977). On the other hand, the Employer has instructed its staff to question outsiders and has consistently taken action to enforce its rule. Thus, the Employer prohibited access to the hospital and grounds by a meat salesperson, a person selling handbags, Jehovah's Witnesses, and a knife salesperson. Accordingly, we find that the Employer's restrictions on the Petitioner's access to the hospital and its prohibition on solicitation and distribution by nonemployee organizers did not interfere with the election.

B. Employee Solicitation

The remaining objections concern the Employer's prohibition of solicitation for the Petitioner by employees. At all times material, the Employer maintained the following established no-solicitation policy:

Employees may not solicit or distribute literature, for any purpose, during working time. Employees may not solicit or distribute literature, at any time, for any purpose, in immediate patient care areas, such as patient rooms, operating rooms, and places where patients receive treatment, such as X-ray and therapy areas.

As found by the Hearing Officer, the no-solicitation rule is a presumptively valid rule which tracks the language approved by the Board in setting the general standard for lawful limitation of solicitation in hospitals. *St. John's Hospital and School of Nursing, Inc.*, 222 NLRB 1150 (1976).³ The Board's general standard was approved by the Supreme

³ For reasons set forth in their dissent in *Essex International, Inc.*, 211 NLRB 749 (1974), Chairman Fanning and Member Jenkins would find that Respondent's no-solicitation rule prohibiting such activity during "working time" is unlawful. Nevertheless, they acknowledge that, until such time as the majority view changes, they are institutionally bound to accept the no-solicitation rule's validity in this respect.

Court in *Beth Israel Hospital v. N.L.R.B.*, 437 U.S. 483 (1978), in which the Court stated:

We therefore hold that the Board's general approach of requiring health-care facilities to permit employee solicitation and distribution during nonworking time in nonworking areas, where the facility has not justified the prohibitions as necessary to avoid disruption of health-care operations or disturbance of patients, is consistent with the Act.

The instant proceeding presents issues concerning the application of the general rule to certain areas of the hospital, including halls and corridors, lobbies and waiting rooms, and break areas, and whether the rule was discriminatorily applied to union solicitation and to off-duty employees. The Board's general rule regarding solicitation in hospitals has been in a state of development as to its application in specific situations, and because of further clarification of the general rule, we remanded for further hearing. On the basis of the supplemental hearing, as well as the original hearing, we can now decide the issues presented in this case. A description of how the hospital operates is crucial to understanding our resolution of the issues in this case.

1. Areas in which solicitation was prohibited

Intercommunity Hospital⁴ is a small facility with approximately 230 employees and fewer than 100 patient beds. It is a new, one-story structure which from its inception has been too small to accommodate all its medical needs. Accordingly, almost all areas of the hospital are exposed to the presence of patients or their visitors at various times. Because of space limitations, the hospital does not have a cafeteria or other large area where employees can gather on breaks. The hospital does have 5 designated breakrooms, but the largest and most accessible, breakroom A, holds only 10 to 15 people. Breakroom A is centrally located and is used by employees throughout the hospital; it contains vending machines and a refrigerator for the use of employees.

The medical-surgical wards, i.e., the patient rooms, are located at one end of the hospital. Each has a nursing station at its center with approximately 20 patient rooms along halls on both sides. Along the end of one of these corridors is the critical care unit with its own centrally located nursing station surrounded by specially equipped rooms. A distance of a few yards separates these two wings

⁴ This description is taken largely from the Hearing Officer's supplemental report which accurately and concisely states the facts shown in the record.

from the rest of the hospital. There is one connecting approach, the central corridor, which runs from the patient wings past the business and administrative areas, to the recovery and laboratory areas, pharmacy, respiratory therapy, operating rooms, radiology, delivery, and pediatric areas. Hospital patients on gurneys, or stretchers, are routinely wheeled along the central corridor when being taken to or from any of the above specialty areas. The central corridor is also the route to the operating room. The other main corridor is perpendicular to the central corridor, goes past the business, administrative, and dietary areas on one side, and goes past the laboratory, recovery, and operating rooms on the other. This corridor is used to go to the obstetrics wing and delivery areas. These distances are not great; the central corridor is about 150 feet from one end to the other; the perpendicular corridor is about 80 feet long.

Corridors and halls are used by both in-patients and out-patients. Occasionally patient beds are temporarily placed in the hallways of the medical-surgical and obstetrics wings. Generally, patients remain there only briefly while their rooms are prepared after previous patients' discharges. Occasional emergency admissions may be situated in hallways for longer periods. The beds are only in the patient area hallways and not in the main corridors. Patients, who are relearning to walk or are regaining strength after illness, are encouraged to walk prescribed distances as part of their recovery. There are railings along the hall walls to aid patients in this purpose. Because the physical therapy room has been diverted to other uses, physical therapists use the hallways and corridors while working with their clients. In some instances, patients are taken to the hospital entrances to practice opening doors.

Out-patients come to the hospital for emergency treatment and for preadmission diagnostic tests. They use the corridors and main entrance areas and the waiting areas adjacent to the x-ray, laboratory, emergency room, and main entrance areas. The two waiting areas, at the main entrance and the emergency room area, serve a double purpose. Staff also use them for taking medical histories and for communicating evaluations of treatment and prognosis to family and friends.

The critical care nurses station is in the center of an enlarged part of the hallway with patient rooms all around it. More traditional nurses stations are located at each of the two patient care wings, obstetrics, pediatric, nursery, recovery, and emergency room areas. The desk areas are not enclosed. In addition to patients' call buttons, oral calls can be heard by the staff at the stations. The most severe-

ly ill patients are often placed in rooms closest to the station. Depending on the time of day, up to seven nurses and doctors may simultaneously use a nursing station for writing orders, charting, discussing patients, receiving calls, and dispensing medicine. Ward clerks perform paperwork associated with diagnostic tests; narcotics and other medications are stored in the stations.

Nurses stations are not constantly busy, and especially at night there are quiet times when the nurses read, knit, and talk. Topics of conversation are varied, and at times heated exchanges occur. If the conversations become loud, senior staff stop them. Nurses stations are also the place of occasional festivities, especially during holiday times. Small parties have been held on special occasions such as retirements. Nurses often take breaks at their stations; of course, someone is always on duty at the stations, and patients' needs take preference over other activity.

Although the Employer's no-solicitation rule did not state in what areas solicitation was prohibited except by the general term "immediate patient care areas," various supervisory personnel made clear in the course of the campaign that solicitation was prohibited in the halls and corridors, the lobby and waiting room, and the nurses stations. In view of the facts that the hospital was in a new building, the Board's standard governing employee solicitation in hospitals was in a state of flux, and the Employer did not haphazardly or arbitrarily apply the rule to specific areas, we find that the Employer's no-solicitation rule was reasonably specific and not ambiguous.

In applying the general standard of immediate patient care areas to specific areas in a hospital, the Board must, as stated by the Supreme Court in *N.L.R.B. v. Baptist Hospital, Inc.*, 442 U.S. 773, 789 (1979), take "into account the medical practices and methods of treatment incident to the delivery of patient-care services in a modern hospital." The Board must also take into account the statutory extension of organizational rights to hospital employees. In balancing these accounts, we have determined that prohibitions on solicitation in immediate patient care areas are presumptively valid and that solicitation may be legitimately prohibited in other areas if justified by the hospital as necessary to further patient care. In a general sense, every area of a hospital serves to further patient care. The standard applicable for determining what justification is necessary to validly ban solicitation is not based on a general view of the purposes of a hospital but is based on a showing that the areas in question serve important and direct functions in the care of patients. In other words, the standard is that solici-

tion may lawfully be prohibited where it is shown that it would tend to directly affect patient care by disturbing patients or disrupting health services. This, in essence, is the rule set by the court in *Beth Israel Hospital v. N.L.R.B.*, 437 U.S. 483 (1978). In applying these rules to the specific areas here in question, we find, for the following reasons, that the Employer was justified in banning solicitation in the halls and corridors, the lobbies or waiting rooms, and the nurses stations.

Halls and corridors: In *N.L.R.B. v. Baptist Hospital, Inc.*, *supra*, 787-790, the Supreme Court expressed serious doubt "on a presumption as to hospitals so sweeping that it embraces solicitation in the corridors and sitting rooms on floors occupied by patients." However, the Court found it unnecessary to reach the issue as the employer had shown that its ban on solicitation was justified. The Court, at 788, quoted with approval the following passage from *Baylor University Medical Center v. N.L.R.B.*, 578 F.2d 351, 355-356 (D.C. Cir. 1978), *affd.* in relevant part 439 U.S. 9 (1978):

The importance of preventing crowding and disruption in the hospital corridors cannot be seriously debated. Experienced witnesses testified of the extent to which congestion in the corridors impedes the operation of the medical staff and annoys patients and visitors. Quick and unimpeded passage through the hallways was shown to be imperative to the efficient operation of the hospital and to the success of certain of its emergency services, such as the cardiac arrest unit. The hallways serve not only as passageways for patients, visitors, doctors, and medicine, but also as viewing rooms for the nursery and storerooms for a variety of hospital equipment which must be available at a moment's notice. There was also testimony that a great deal of the physical therapy undertaken at [the hospital] actually took place in the corridors, and that for many departments the corridors served as the only available waiting room.

In light of the above cases and our further experience with hospital no-solicitation rules, we conclude that the halls and corridors adjacent to patient rooms, operating rooms, x-ray rooms, and other immediate patient care areas in this case are extensions of immediate patient care areas in which solicitation presumptively may be prohibited. In addition we also find that the Employer has justified its prohibition on solicitation in these areas. The Employer has shown that these halls and corridors accommodate occasional patient overflow, are used to store vital medical equipment, are regu-

larly used by patients for various therapy procedures, and are used by outpatients as waiting areas.

The central corridor, which links the halls adjacent to patients' rooms with the corridors adjacent to the operating rooms, etc., is not adjacent to immediate patient care areas and in that sense not an extension of the patient care areas. For this reason we shall not extend the presumption to the central corridor.⁵ However, we do find that the Employer has justified its prohibition of solicitation in the central corridor. Patients are regularly moved on gurneys, or stretchers, through the central corridor en route to treatment, diagnostic evaluation, and operations and from postoperation recovery rooms to the patient rooms. As found by the Court in *Baptist, supra* at 789, fn. 16, "Some corridors in some hospitals . . . may be used neither for treatment or care, but may be of great importance in the movement of patients (and emergency equipment) through the hospital." The central corridor falls within this category. In addition, patients regularly use the central corridor for physical therapy, and in fact the planned physical therapy center was diverted to other purposes.

Objection 8 concerns a warning given by a supervisor to employees engaged in a 5-minute conversation in the hall of the critical care unit. As the critical care hallway is an immediate patient care area, a prohibition on solicitation in that area is presumptively valid. Accordingly, we agree with the Hearing Officer's recommendation in her supplemental report that Objection 8 be overruled. We are, of course, satisfied that the conversation amounted to solicitation and was not merely a casual conversation or off-hand remark about the Union.

The Petitioner has suggested that a ban on excessive noise or crowding would serve the hospital's purpose without interfering with employee organizational rights. While superficially plausible, especially as the central corridor is not constantly filled with patients, the argument begs the question in that it is equally applicable to any ban on solicitation. Specifically, the argument, or a highly similar one, has been rejected by the court in *Baylor, supra*, 356, wherein the court stated, "To suggest this alternative, however, would only exalt form over substance, as there are very few activities besides solicitation and distribution that could plausibly take place in hospital corridors and result in greater crowding and noise."

⁵ Unlike *Baptist* and *Baylor* hospitals, the hospital here is a single-story structure and does not, therefore, have any nonpatient treatment floors. The central corridor is, however, somewhat analogous to the corridors on an administrative floor of a large, multistory structure.

Lobby and waiting room: The lobby at the main entrance of Intercommunity Hospital and the waiting room near the emergency room serve the usual purpose of places for people to wait—of patients waiting to be admitted, of outpatients waiting for treatment, and of visitors waiting to see patients. In such capacity, the lobby and waiting room are not sufficiently related to patient care that the hospital would be justified in prohibiting solicitation as necessary to avoid disruption of health care operations or disturbance of patients. See *Eastern Maine Medical Center*, 253 NLRB 224 (1980). Unlike that case, however, the lobby and waiting room at Intercommunity Hospital are used by staff to take medical histories and for conferring with the family and friends of patients. The lobby and waiting room at Intercommunity Hospital, thus, serve a similar purpose to the small sitting areas discussed by the Court in *Baptist Hospital, Inc.*, *supra*, 784. Accordingly, we find, in agreement with the Hearing Officer's recommendation in her supplemental report, that the Employer was justified in prohibiting solicitation in the lobby and waiting room.

Nurses stations: Nurses stations vary in their physical layouts from hospital to hospital. Some may be open, others partitioned, and some may have separate, private break areas. Because of the varied layouts of nurses stations, it would be inappropriate to find that prohibitions on solicitation in the areas in general are presumptively valid. As stated by the Court in *Baptist Hospital, Inc.*, *supra* at 789, fn. 16, "In different hospitals, the use and physical layouts of such a variety of areas may require varying resolutions of questions about the validity of bans on union solicitation."

The desk areas of the nurses stations at Intercommunity Hospital are not enclosed. Oral calls from patients can be heard from nearby rooms, and, conversely, patients in nearby rooms can hear any fairly loud conversation at the nurses stations. So far as practicable, the most gravely ill patients are put in rooms closest to the stations. As expected, some employees are always on duty there, and the activity varies with the time of day. At night when patients are generally sleeping, the stations are more relaxed and informal than during the day when up to seven nurses and doctors may be simultaneously using the station for various patient-care activities. Staff are not prohibited from using the stations for breaks and employees do take breaks at the stations. However, there is no separate or enclosed area in which to take such breaks. And as indicated, stations are occasionally the center of festivities.

From the foregoing, we are persuaded that the Employer has justified its ban on solicitation at

nurses stations.⁶ To base our decision on the more informal functioning of the stations at night would be to ignore the more formal, rigid daytime functions of the stations; to find the no-solicitation rule justified for the daytime and unjustified at night would be anomalous. The significant factors here are that the nurses stations are open so any loud conversations could be heard by patients in their rooms, and that some employees are always on duty and would be subject to distraction if solicitation were permitted. To find that a ban on excessive noise is all that is necessary would "only exalt form over substance." (See our discussion of this suggestion in the "corridor" section above.) In addition, we believe our conclusion is supported by the Court in *Baptist Hospital, Inc.*, *supra*. In that case, the hospital permitted solicitation at nurses stations at least in part because the stations were partitioned from surrounding areas open to patients. After noting this fact, the Court stated, at 785, footnote 14, "It may well be that in other hospitals, solicitation in these critical areas would threaten to disturb patients or disrupt patient care, since there are always some employees on duty there." And as also stated by the Court in *Baptist*, at 81, footnote 11, "Solicitation may disrupt patient care if it interferes with the health-care activities of doctors, nurses, and staff, even though not conducted in the presence of patients." As we believe these principles apply to the nurses stations at Intercommunity Hospital, we find that the Employer was justified in banning solicitation in those areas.

Other areas: We are aware that most areas of an acute care general hospital are involved in patient care and that the areas in which solicitation must be permitted may be extremely limited. As indicated, Intercommunity Hospital does not have an employee cafeteria or other large area for employees. Thus, in light of our findings above, the only areas in which employee solicitation must be permitted in Intercommunity Hospital are the relatively small breakrooms. Although, as recognized by the Court in *Baylor University Medical Center*, *supra* at 358-359, areas available for solicitation may in some hospitals be so limited that "an employer may be forced to permit solicitation where he otherwise could legitimately ban it," we do not believe that this situation is present here. The breakrooms do present a viable, albeit limited, channel of communication by employees for organizational purposes. As stated above, at least one of these breakrooms is centrally located and used by employees throughout the hospital. Accordingly, we find that the

⁶ Although the record does not clearly show that the Employer formally banned solicitation at the stations, the matter was fully litigated and treated by the parties as if there were such a ban.

channels of communication available to employees are not so limited as to require the Employer to permit solicitation by employees in areas where it otherwise could lawfully be prohibited.

2. Alleged discriminatory enforcement

The Petitioner contends, and the Hearing Officer found in both her report, and supplemental report, that the Employer discriminatorily enforced its no-solicitation rule by more vigorously enforcing it against union solicitation than against other employee solicitation. We do not agree. Some of the activity cited by the Petitioner is activity which is permissibly exempt from the rule such as Girl Scout collections to benefit the hospital and hospital guild activity. *Rochester General Hospital, supra*. (See our discussion above in the section concerning nonemployee solicitation.) Other solicitations were of the exempt variety, were in fact prohibited by the Employer, or were trivial. The hospital permitted drug companies to set up display booths in the central corridor. This solicitation, however, is directly related to the hospital's function and is exempted.⁷ Another activity permitted by the hospital was the use of bulletin boards to sell shriek alarms, small sirens to carry on the person for personal protection. The record shows that one or two employees were concerned about going into the parking lot at night, that the employees told management about the problem and that they wanted to publicize the availability of shriek alarms which would be sold at a discount if enough employees were interested, and that management approved the solicitation. We find that this is a permissible exemption from the rule.

The record discloses that certain employees solicited orders from other employees for Girl Scout cookies, Avon products, Tupperware, and other items. However, the record does not show that any supervisory staff of the hospital approved or condoned such solicitation. To the contrary, the record shows that management told employees who asked that such solicitation was impermissible and that when management saw Avon or Tupperware catalogs they reminded supervisors that such solicitation was impermissible and that the supervisors should so instruct employees. That such catalogs were not confiscated is not an indication of discriminatory enforcement; the record shows that management did as much as was reasonably necessary to uniformly enforce the rule prohibiting so-

⁷ Nor does permitting this activity in the central corridor require the Employer to permit union solicitation in the area. Because they serve the purpose of the hospital, the drug booths add to the congestion in the corridor in the same way that storage of equipment would. Such hospital related use of the corridor would make any other source of congestion even more disruptive.

licitation by employees. Other instances cited by the Petitioner are trivial, such as match books advertising ambulance services lying at various places in the hospital and employees asking their friends and acquaintances to buy tickets to high school band performances. There is no evidence that such activity took place in the presence of supervisors or was condoned or approved by them. Accordingly, we find that the Petitioner has failed to establish that the Employer discriminatorily enforced its no-solicitation rule.

3. Restrictions on off-duty employees

During the Union's organizational drive the Employer placed restrictions on off-duty employees remaining on the hospital premises. The Employer argues that because of crowded conditions it has never encouraged staff to linger or loiter at the Hospital during off-duty hours and that it did not enforce this policy only during the election period. In *GTE Lenkurt, Incorporated*, 204 NLRB 921 (1973), the Board majority held that a rule prohibiting off-duty employees from being on the premises was permissible. However, in *Tri-County Medical Center, Inc.*, 222 NLRB 1089 (1976), we held that a no-access rule may not be used to prohibit solicitation or distribution by off-duty employees unless it has been clearly disseminated to all employees and applies to off-duty employees seeking access to the plant for any purpose. The Employer's rule states, "When you are off duty, visits to the hospital should be limited to friends or relatives who are patients or on official business with the hospital." The rule on its face does not prohibit access for all purposes. In addition, employees testified that they were permitted to remain in the hospital after work while waiting for rides or carpools. As the Employer's rule does not meet the *Tri-County* standard, it cannot be used to prohibit solicitation by off-duty employees.

In one incident, an off-duty employee, who had brought an envelope to an employee at a nurses station, was told she should not be there and could not hand the employees anything. The area, however, was one in which solicitation and distribution were banned, and the other employee was on duty. In another instance, two off-duty employees and a third person were talking in the central corridor, and a supervisor asked them to leave. That area was also one in which solicitation was banned. Accordingly, neither of these incidents shows that the Employer prohibited solicitation by off-duty employees.

In a third incident an off-duty employee was discussing the Union with clerical workers during a break in the emergency breakroom, and another

off-duty employee came in. A supervisor told the two off-duty employees to leave. As the breakroom is an area in which solicitation must be permitted by the Employer, the supervisor's action was either a ban on solicitation by off-duty employees or a ban on solicitation in the breakroom. In either event the prohibition would be objectionable. We need not, however, decide for which reason (or both) the ban was imposed, because the ban is impermissible for either reason.

4. The effect of the objectionable conduct on the election

The Employer argues that any objectionable conduct which it might be found to have been engaged in is *de minimis* and would not warrant setting aside the election. We do not agree. The rights of employees to discuss the Union and to solicit support for the Union are fundamental to their Section 7 right to organize. Employer discipline for or unlawful prohibition of such activity extends beyond the individuals who receive the warnings or are told of the prohibition to affect others in the unit or units. This is especially so where, as here, the discipline or prohibition was directed at a leading union adherent. In addition, the Employer had, in other respects, severely, if lawfully, restricted areas in which employees could solicit. Thus, any restriction placed on solicitation in the few areas, i.e., the breakrooms, where solicitation may not be banned, becomes a severe restriction on the employees' right to organize. Similarly, employees at Intercommunity Hospital are restricted in soliciting support for the Union because, by the nature of hospital employment, employees do not all take breaks at the same time. Thus, any restrictions on solicitation by off-duty employees becomes a severe restriction. As the objectionable conduct affects the organizational rights of all the employees at the hospital, we find that the conduct is such that the elections conducted herein should be set aside and new elections directed.

We have considered the Petitioner's objections, the Hearing Officer's report and supplemental report and the exceptions and briefs, and for the reasons above we have sustained Petitioner's Objection 4. Accordingly, we shall set aside the elections conducted in the nurses and medical laboratory technologists unit and in the business office clerical unit and shall direct second elections in

these units. If the revised tally of ballots shows that the Petitioner did not receive a majority of the valid ballots cast in the technical, service, and maintenance employees unit, we shall set aside the election in that unit and direct a second election. The appropriate units are:

Case 20-RC-14489. All full-time and regular part-time registered nurses and medical laboratory technologists; excluding all other employees, coordinator of social services, director of nurses, assistant director of nurses, nurse coordinators, head nurses, charge nurses, emergency room supervisor, operating room supervisor, infection control nurse, laboratory director, assistant laboratory director, guards and supervisors as defined in the Act.

Case 20-RC-14492. All full-time and regular part-time technical, service and maintenance employees; excluding professional employees, registered nurses, medical laboratory technologists, business office clericals, confidential employees, guards and supervisors as defined in the Act.

Case 20-RC-14493. All full-time and regular part-time business office clerical employees; excluding all other employees, comptroller, director of finance, business office manager, chief accountant, collection and admitting supervisor, billing supervisor and outpatient admitting supervisor, guards and supervisors as defined in the Act.

ORDER

It is hereby ordered that the elections held on December 22, 1977, in Cases 20-RC-14489 and 20-RC-14493 be, and they hereby are, set aside, that, if the revised tally of ballots shows that the Petitioner did not receive a majority of the valid ballots cast, the election held in Case 20-RC-14492 be, and it hereby is, set aside, and that Cases 20-RC-14489, 20-RC-14492, and 20-RC-14493 be, and they hereby are, remanded to the Regional Director for Region 20 for the purpose of conducting new elections at such time as the Regional Director deems that circumstances permit the free choice of bargaining representative.

[Direction of Second Elections and *Excelsior* footnote omitted from publication.]